

Assembly Bill No. 1634

Passed the Assembly August 28, 2014

Chief Clerk of the Assembly

Passed the Senate August 27, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 6319, 6320, and 6625 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1634, Skinner. Occupational safety and health: violations.

Existing law establishes the Division of Occupational Safety and Health in the Department of Industrial Relations to enforce employment safety laws. Existing law authorizes the division to conduct hearings, inspections, and investigations regarding alleged violations of employment safety laws and to issue a citation for a violation of those laws, including violations that regulations adopted by the division classify as serious, repeat, or willful violations. Existing law authorizes the division to propose appropriate modifications concerning the characterization of violations and corresponding modifications to civil penalties for violations. Existing law requires the division, if a serious violation is not abated at the time of the initial or subsequent inspection, to require the employer to submit a signed statement under penalty of perjury that he or she has complied with the abatement terms within the period fixed for abatement of the violation. Existing law establishes the Occupational Safety and Health Appeals Board in the department, and prescribes procedures for the appeals board to hear and decide appeals of a citation. Regulations adopted by the appeals board generally stay the abatement period of a citation until the conclusion of the appeal.

This bill would prohibit the division from granting, for serious violations, a proposed modification to civil penalties for abatement or credit for abatement unless the employer has abated the violation, as specified, or has submitted a statement to the division in accordance with existing law, and would additionally require supporting evidence with the statement where necessary. The bill would authorize the division to grant such a modification only if the violation has been abated, as specified, or the signed statement and supporting evidence is received within 10 working days after the end of the period fixed for abatement. The bill would generally prohibit the stay or suspension of a requirement to abate the hazards

affirmed by the decision or order during the pendency before the appeals board of a petition for reconsideration of a citation for a violation that is classified as a serious violation, repeat serious violation, or willful serious violation. The bill would authorize the appeals board to stay or suspend an abatement, upon petition by the employer, only if the employer demonstrates that a stay or suspension will not adversely affect the health and safety of employees.

The people of the State of California do enact as follows:

SECTION 1. Section 6319 of the Labor Code is amended to read:

6319. (a) If, after an inspection or investigation, the division issues a citation pursuant to Section 6317 or an order pursuant to Section 6308, it shall, within a reasonable time after the termination of the inspection or investigation, notify the employer by certified mail of the citation or order, and that the employer has 15 working days from receipt of the notice within which to notify the appeals board that he or she wishes to contest the citation or order for any reason set forth in Section 6600 or 6600.5.

(b) Any employer served by certified mail with a notice of civil penalty may appeal to the appeals board within 15 working days from receipt of that notice for any reason set forth in Section 6600. If the citation is issued for a violation involving the condition or operation of any machine, device, apparatus, or equipment, and a person other than the employer is obligated to the employer to repair the machine, device, apparatus, or equipment and to pay any penalties assessed against the employer, the other person may appeal to the appeals board within 15 working days of the receipt of the citation by the employer for any reasons set forth in Section 6600.

(c) The director shall promulgate regulations covering the assessment of civil penalties under this chapter which give due consideration to the appropriateness of the penalty with respect to the following factors:

- (1) The size of the business of the employer being charged.
- (2) The gravity of the violation.
- (3) The good faith of the employer, including timely abatement.
- (4) The history of previous violations.

(d) Notwithstanding subdivision (c), if serious injury, illness, exposure, or death is caused by any serious, willful, or repeated violation, or by any failure to correct a serious violation within the time permitted for its correction, the penalty shall not be reduced for any reason other than the size of the business of the employer being charged. Whenever the division issues a citation for a violation covered by this subdivision, it shall notify the employer of its determination that serious injury, illness, exposure or death was caused by the violation and shall, upon request, provide the employer with a copy of the inspection report.

(e) The employer shall not be liable for a civil penalty under this part for any citation issued by a division representative providing consulting services pursuant to Sections 6354 and 6355.

(f) Whenever a citation of a self-insured employer for a willful, or repeat serious violation of the standard adopted pursuant to Section 6401.7 becomes final, the division shall notify the director so that a hearing may be held to determine whether good cause exists to revoke the employer's certificate of consent to self-insure as provided in Section 3702.

(g) Based upon the evidence, the division may propose appropriate modifications concerning the characterization of violations and corresponding modifications to civil penalties as a result thereof. For serious violations, the division shall not grant a proposed modification to civil penalties for abatement or credit for abatement unless the employer has done any of the following:

- (1) Abated the violation at the time of the initial inspection.
- (2) Abated the violation at the time of a subsequent inspection prior to the issuance of a citation.
- (3) Submitted a signed statement under penalty of perjury and supporting evidence, when necessary to prove abatement, in accordance with subdivision (b) of Section 6320.

SEC. 2. Section 6320 of the Labor Code is amended to read:

6320. (a) If, after inspection or investigation, the division issues a special order, order to take special action, or a citation for a serious violation, and if at the time of inspection the order is not complied with or the violation is not abated, the division shall conduct a reinspection in the following cases:

- (1) All inspections or investigations involving a serious violation of a standard adopted pursuant to Section 6401.7, a special order or order to take special action, serious violations of those orders,

and serious violations characterized as repeat or willful or with abatement periods of less than six days. These reinspections shall be conducted at the end of the period fixed for compliance with the order or abatement of the violation or within 30 days thereafter.

(2) At least 20 percent of the inspections or investigations involving a serious violation not otherwise scheduled for reinspection. These inspections shall be randomly selected and shall be conducted at the end of the period fixed for abatement of the violation or within a reasonable time thereafter.

(b) Whenever a serious violation is not abated at the time of the initial or subsequent inspection, the division shall require the employer to submit a signed statement, with supporting evidence, where necessary to prove abatement, under penalty of perjury, that he or she has complied with the abatement terms within the period fixed for abatement of the violation. The division may grant a modification pursuant to subdivision (g) of Section 6319 only if the employer has abated the violation at the time of the initial or subsequent inspection or the statement, signed under penalty of perjury, and supporting evidence are received within 10 working days after the end of the period fixed for abatement. At no time shall the period for abatement be fixed prior to the issuance of a citation. The submission of a signed abatement statement shall not be considered as evidence of a violation during an appeal. The division shall include on the initial notice of civil penalty a clear warning of reinspection for failure to submit the required statement in the time allotted, and of an additional, potentially substantial monetary penalty for failure to abate the violation. If the division fails to receive evidence of abatement or the statement within 10 working days after the end of the abatement period, the division shall notify the employer that the additional civil penalty for failure to abate, as provided in Section 6430, will be assessed retroactive to the end of the abatement period unless the employer can provide sufficient evidence that the violation was abated prior to that date. The division shall conduct a reinspection of serious violations within 45 days following the end of the abatement period whenever it still has no evidence of abatement.

SEC. 3. Section 6625 of the Labor Code is amended to read:

6625. (a) (1) Except as provided in subdivision (b), the filing of a petition for reconsideration shall suspend for a period of 10 days the order or decision affected, insofar as it applies to the

parties to the petition, unless otherwise ordered by the appeals board.

(2) Except as provided in subdivision (b), the appeals board upon the terms and conditions which it by order directs, may stay, suspend, or postpone the order or decision during the pendency of the reconsideration.

(b) The filing of a petition for, or the pendency of, reconsideration of a final order or decision involving a citation classified as serious, repeat serious, or willful serious shall not stay or suspend the requirement to abate the hazards affirmed by the decision or order unless the employer demonstrates by a preponderance of the evidence that a stay or suspension of abatement will not adversely affect the health and safety of employees. The employer must request a stay or suspension of abatement by filing a written, verified petition with supporting declarations within 10 days after the issuance of the order or decision.

Approved _____, 2014

Governor